

NAVAL INSPECTOR GENERAL

REPORT OF INVESTIGATION

Subj: NAVY SENIOR OFFICIAL CASE 201100934; ALLEGED ABUSIVE
LEADERSHIP AND IMPROPER COMMAND INFLUENCE BY RDML TERRY
KRAFT, USN

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Office of the Naval Inspector General
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RDML TERRY KRAFT, USN

Preliminary Statement

1. On 28 March 2011, the Naval Inspector General (NAVINSGEN) received an anonymous call to its recorded hotline number in which the caller alleged that RDML Terry Kraft, Commander, Carrier Strike Group TWELVE (CSG-12), embarked on the ENTERPRISE, was an abusive leader and that the Admiral had improperly exerted command influence on the disposition of military justice cases occurring on the ship. On 31 March 2011, NAVINSGEN received an additional complaint from a confidential complainant that various personnel on board the ENTERPRISE were suppressing or interfering with proper and timely reporting of sexual assault cases. Although, RDML Kraft was not singled out as the primary subject of this complaint, the complainant identified him as part of the problem.

2. Three allegations were identified for investigation. The allegations and associated conclusions are listed directly below:

Allegation 1: That RDML Kraft engaged in a pattern of abusive leadership by correcting subordinates in a public, loud, and unprofessional manner contrary to 10 U.S.C. 5947 (Requirement of exemplary conduct), and Navy Regulations Art. 1023 (Abuse of authority).

Conclusion: The allegation is not substantiated.

Allegation 2: That RDML Kraft improperly directed a subordinate to impose nonjudicial punishment in a particular case in violation of paragraph 1d(2), Manual for Courts-Martial, Part V.

Conclusion: The allegation is substantiated.

Allegation 3: That RDML Kraft suppressed or improperly delayed timely reports of sexual assault in violation of SECNAVINST 1752.1B (Sexual Assault Victim Intervention (SAVI) Program).

Conclusion: The allegation is not substantiated.

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-- He has also stated that he does spot checks, which is a little out of the norm, but not illegal. And he has publicly stated that everybody that does [his] checks will fail and we have junior Sailors, E4 and E5 pay grade that he's failing on this spot checks when they in fact have done a good job during that spot check and I am concerned about the effects of the Sailors that know they are getting a spot check from the Admiral because they already know that they're going to fail.

-- Another thing that the Admiral has been known to do is to frequent places that junior Sailors hang out while they are on liberty in foreign ports and he will walk up to them and challenge them. Again, not illegal but then when they don't have the right answer for him he yells at them and verbally abuses them in front of other Sailors and again it's sort of detrimental to the morale of the crew.

-- And the biggest concern is several instances of what I consider to be undue command influence, [remainder of transcript will be quoted in the consideration of allegation 2].

Testimony concerning basketball game

5. In early 2011, an intramural basketball tournament was held on ENTERPRISE as part of other activities during a Steel Beach Picnic.¹ RDML Kraft was in the vicinity of one of the games and intervened either during or immediately after he heard a player or a spectator loudly swearing. It appears he directed his comments to (b)(6) (b)(7)(c) and (b)(6) (b)(7)(c), the referees.

6. (b)(6) (b)(7)(c) testified:

Then all of a sudden the Admiral came up. ... And he was like, "Who's in charge of this event?" And I was like, "I am, sir." ... And then he was like -- he just looked at me. And then he was like, "No. I want to know who's in charge of this event." I was like, "Again, I am, sir." ... So he started talking about people [were] cursing in the audience, and that if I [didn't] control that, he [was] going to shut it down. ... So he looked at me and was like, "This is not going to happen, and this is not going to go on." And he was like, "And if you don't get this squared away right now, I'm going to shut this whole thing down." And I just said, "Aye, aye, sir."

Q. His behavior to you, did you feel that was abusive?

A. I felt like it was out of position because I was like -- I [was] always taught in the Navy that he's the Admiral and I'm the (b)(6) (b)(7)(c). He shouldn't even have been talking to me. He should have went and found who the chief was, or asked for the chief, and let the -- tell the chief whatever. Then the chief, you know, goes down the chain of command.

¹ Steel Beach Picnics are Navy tradition generally involving a command sponsored barbecue on the deck of a ship.

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7. (b)(6) (b)(7)(c) testified:

I can't exactly remember word by word what he said. But the gist of it was, "I expect more out of" -- he was talking about the chief, "I expect more out of senior enlisted authority," or whatever else, and that we needed to get a hold of the game, and that if we heard -- we needed to be policing the game. And if there was cussing we needed to cut it out. And he said something much harder than that, but I can't really remember what the rest of it was. But the gist of it was, "You guys need to get a hold of this game. If I hear cussing I'm going to cut the basketball out and that will be it."

Q. Did you consider his intervention unreasonable?

A. I can't say it was unreasonable. I can't say it was unreasonable.

I wouldn't say it was loud. He kind of wanted -- he was just standing and talking, not really loud nor abusive. He was just -- he was angry. He was upset totally so it was kind of like stern talking.

8. (b)(6) (b)(7)(c) was a player in the relevant game and testified:

I mean we had a basketball game and here we are playing basketball and some profanity came up and Admiral Kraft told the individual, "That's not the way to conduct yourself, you know, (b)(6) (b)(7)(c)" I remember that but it wasn't anything out of the ordinary.

9. (b)(6) (b)(7)(c) was identified by several of the witnesses as the (b)(6) (b)(7)(c) RDML Kraft may have heard swearing. (b)(6) (b)(7)(c) testified that the Admiral did not approach him while he was playing, but after he heard of the Admiral's concern he sought out the Admiral and discussed the incident with him:

So I left and went to the flight deck and found the Admiral and, you know, talked to him and said, "Look, sir. I understand exactly where you're coming from. I wasn't trying to, you know, not behave (b)(6) (b)(7)(c) like but we were in need of a game. And yes, we have to be -- we all have to be careful with the cursing and all that. We just got caught up in the moment and from this point on, you know, we'll try to make sure that we don't, you know, speak like that when we're down there playing so that, you know, we keep everything -- you know keep it -- even though we, you know, will still be seamen we still want to be respectful and all that. And he was like, "Okay." He understood. You know there wasn't like any conflict and then we just -- after that point we got past that and we just talked regularly, you know in normal conversation.

10. For completeness as we interviewed witnesses on other issues we asked if they witnessed or heard about the basketball game incident. Many of those who had not witnessed it did hear about it. They generally heard that the Admiral was more excited about the swearing than reported by the actual witnesses to the event.

Testimony concerning karaoke

11. In the evening of the same day as the Steel Beach Picnic, a karaoke night was held on the mess decks. (b)(6) (b)(7)(c) also happened to be running that when RDML Kraft intervened during one of the songs. She recalls the incident as follows:

I was doing karaoke. I was the host, like always. ... So we put out the rules before we start. Hey no cursing. You know, if you come across a song and you might have forgot that it had a cuss word in that song make sure you either not say the word or you find another word to replace it. We want to try to keep it, you know, clean and professional.

[At some point I noticed the Admiral standing in the back of the room]² So I was like, okay. So I seen him. He didn't say nothing. He was leaning back there on the bulkhead. The guy got done singing. He clapped his hands. But then the black guy came up and started singing some song by Mike Jones. The song says, "Back then, hos didn't want me. Hos all want me," or something like that. But the guy never says the word. He was like, "Back then, girls don't want me. Now hot girls all want me." And you could hear him in the mike. "Back then, girls didn't want me. Now hot girls all want me." He's saying "girls" in place of the H word.

So all of a sudden, like right in the middle, while he was singing, the Admiral walked up and pulled me to the side and was like, "What type of leadership are you? Is this the kind of leadership we uphold? You know, you let him say this word?" And I said, "Sir, he's not saying the word." I said, "Sir, the instructions that were given to me is that if you sing a song and it has a cuss word in it, you're to find another word to replace it that's not vulgar or you just don't say the word at all and sing the rest of the song." "No. I will not tolerate this." He was saying -- I was like -- and he was like, you know, "You need to turn that song off." And I'm like, "Well, you know, we can't do that. Like that's embarrassing, [to be signing a soon in front of all your shipmates], and for me to go up and just pull the plug on the song." So I was like standing there. I was like, "Aye, aye, sir. Aye, aye, sir." He was like, you know, "What type of leadership are you? You're a second class petty officer," I was like, "But, sir, he didn't say it." "Well, it doesn't matter. The word is on the screen." And I was like -- so I realized at that point that no matter what I said, I was going to be wrong. So I started saying, "Aye, aye, sir. Aye, aye, sir." And he was pointing his finger, and oh, "This will not happen," dah dah dah dah dah, and blah blah blah. And then next thing I know, he -- in the middle, and I was like, "Well, sir" -- and he turned around and walked off.

² (b)(6) (b)(7)(c) noted that prior to seeing RDML Kraft a Caucasian Sailor had sung a Country & Western song in which the Sailor sang the word "whore" or "bitch" or something similar which she corrected. She was not aware if RDML Kraft was present at that moment.

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12. (b)(6) (b)(7)(c) testified that RDML Kraft talked only to her about his concerns, and that no one could over hear their conversation because the music was still playing. She indicated the Admiral was not loud or threatening, but it must have been obvious to others that I was being chewed out by the Admiral again. She went on to testify about her frustrations:

You know, you can't -- I can't volunteer. We can't play basketball in the hangar bay because, oh, he heard somebody in the audience said the F word. If I could control every person that said a cuss word, then I would. But unfortunately, I can't. I can't be eyes and ears here, and it's impossible for anybody to do that. So I told my CPO I didn't want to volunteer for anything anymore. I told (b)(6) (b)(7) who was the (b)(6) (b)(7) on board the ENTERPRISE, I don't want to volunteer for anything and, you know, it's ridiculous that, you know, all this stuff has to go on. Everything between music -- you can't dance. Like, we had Latin dances. We had salsa dances, and all this. And we can't dance. We can't do this. You can't do that. Oh, you don't want us cursing. Oh, you don't want us doing this. You don't want us doing that. And that's all fine and dandy and I understand that. But at the same time, it's like, I'm out in the middle of the water, and here I am trying to be -- like doing you favors and lead from the front and I'm trying to volunteer, and everything that I volunteer for, like you find a problem and you call me out on it. And I'm like, I just don't know what to say because I didn't have no control over that. I was just volunteering and trying to get the morale of my shipmates up and keep everybody smiling and keep everything moving. We look forward to the karaoke. So the karaoke is what really boosts our morale and help us.

Then, after that, my (b)(6) (b)(7) came and gave me a coin because he was like, "Keep doing your thing. You're doing a great job." And he was like, "It's not your fault, you know, whatever, and the Admiral shouldn't have come and talked to you like that." And he was like, "You know, it wasn't supposed to happen that way." And so now they was like, in the middle of any event we're doing, we've got to call, "Attention on deck," when they show up. So I'm like, "So you mean to tell me if I'm in the middle of a basketball game, I got to stop and call, 'Attention on deck,' in the middle of a game?" Or if somebody's singing -- like the last karaoke we had, somebody was singing. We had to cut that person off and say, 'Attention on deck,' just because he showed up. And I just feel like it's just -- it's too much. It's too much. Like a lot of people -- nobody wants to do anything now. Everybody's scared to do anything. Everybody's -- they cut off the talent show. We was getting ready to have a big talent show on the ship so people could show off their talents and the different things they could do. They cancelled it because why? Oh, we can't do anything. Oh, you can't do this. Oh, they -- there's no way for them to screen, you know, over what this person is saying, this person's song, this person's views, this person's that. What are you playing on this? It's just too much. So they cancelled the whole show, like everything.

13. (b)(6) (b)(7)(c) was a monitor at the karaoke night event. (b)(6) (b)(7)(c) saw the Admiral speak to (b)(6) (b)(7)(c) but did not over hear what was said because the Admiral was not loud. (b)(6) (b)(7)(c) approached (b)(6) (b)(7)(c) after the Admiral left and told him that the Admiral was concerned about the language in the songs and she needed his help in figuring out what songs they could or could not use. The Admiral did not stop the karaoke.

Spot Checks

14. The complaint did not identify any witnesses in connection with RDML Kraft conducting spot checks. RDML Kraft admits he conducts spot checks, but denies conducting them in an abusive manner. He stated he does not have a policy of failing all those inspected and in fact has not failed everyone. He noted that, as might be expected, initially many individuals and divisions struggled to adapt to his expectations, as time went on the results of the checks have improved.

15. None of the witnesses identified remember participating in one of the checks. The (b)(6) (b)(7)(c) indicated that he was aware that the Admiral had a reputation for being tough in the checks, but thought him conducting spot checks was appropriate and never heard of him being unprofessional during the checks. The (b)(6) (b)(7)(c) testified that in his experience, when the Admiral was walking about the ship and dealing with Sailors he was "calm" and "considerate."

Liberty Incidents

16. The complaint did not identify any witnesses in connection with RDML Kraft correcting Sailors while on liberty. Both the Group (b)(6) (b)(7)(c) and (b)(6) (b)(7)(c) have witnessed RDML Kraft correct individuals during the liberty visit in Turkey. Both testified that RDML Kraft questioned and corrected Sailors in a reasonable and professional manner. RDML Kraft admits he will question Sailors if he sees them dressed inappropriately, separated from their liberty-buddies,³ or dancing on tables. He indicated that he does not yell or even take names when he talks to the Sailors.

³ There is a requirement that while on liberty in a foreign port, Sailors remain in groups and not alone without special approval.

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General Leadership Style

17. All the witnesses agree that RDML Kraft's leadership style is very direct. The (b)(6) (b)(7) described it succinctly:

I've never considered it abusive but he is certainly very directive and he's very, you know, sometimes he doesn't give you any Mulligans. I mean, he asks direct questions and he expects the answer.

18. No one indicated that he was abusive or unprofessional. The (b)(6) (b)(7) testified that the Admiral has never "yelled at him," but has been upset with him, going on to describe the experience:

Q Going to your personal experience, has he ever treated you in an unprofessional manner or in a manner that humiliated you?
A Well, I mean, I didn't feel, you don't feel very good when you're on the receiving end but I wouldn't say it was humiliating.

19. The (b)(6) (b)(7) did remember one incident where the Admiral told one of his senior officers to "shut up" or words to that effect, but was aware of no other similar incidents.⁴ The (b)(6) (b)(7) and others commented to the effect that RDML Kraft was not abusive, but his leadership style was not one that they necessarily respected and would not want to emulate.

Applicable Standards

20. 10 USC 5947. Requirement of exemplary conduct:

All commanding officers and others in authority in the naval service are required to show in themselves a good example of virtue, honor, patriotism, and subordination; to be vigilant in inspecting the conduct of all persons who are placed under their command; to guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Navy, all persons who are guilty of them; and to take all necessary and proper measures, under the laws, regulations, and customs of the naval service, to promote and safeguard the morale, the physical well-being, and the general welfare of the officers and enlisted persons under their command or charge.

⁴ RDML Kraft denies saying this, and the (b)(6) (b)(7) who was at the applicable meeting does not recall the Admiral telling anyone to shut up. The two other witnesses to the discussion were not readily available to comment and the matter was not pursued since even if it did happen this was the only example of RDML Kraft using language which might be considered unprofessional.

21. Navy Regulations, Article 1023, Abuse of authority:

Persons in authority are forbidden to injure their subordinates by tyrannical or capricious conduct, or by abusive language.

Analysis

22. In connection with the basketball game, the testimony of the actual witnesses to the Admiral's intervention does not portray the Admiral as screaming or abusing them or others involved. Although the one petty officer questions the leadership technique of an Admiral directly confronting an over something that she would expect to be handled through the chain-of-command, no one characterized RDML Kraft's behavior as abusive or unprofessional. (b)(6) (b)(7)(c)

23. In connection with the karaoke, the testimony of the witnesses was to the effect that RDML Kraft was not loud or abusive. He did not stop the karaoke or chastise the individual signing the song. He did instruct one the Sailor responsible for running the karaoke event, that she should not allow songs with inappropriate lyrics. Although this Sailor understood the goal of limiting vulgar speech, she was upset that the Admiral was in effect putting a damper on most entertainment available to the Sailors while underway.

24. There was no evidence that RDML Kraft was abusive while questioning or correcting Sailors while on liberty. Similarly, there was no evidence that RDML Kraft had unreasonable expectations for spot checks or that he was abusive during these checks. Finally, there was no evidence that RDML Kraft's general leadership style was abusive or unprofessional.

Conclusion

25. The allegation is not substantiated.

Allegation 2: That RDML Kraft improperly directed a subordinate to impose nonjudicial punishment in a particular case in violation of paragraph 1d(2), Manual for Courts-Martial, Part V.

Findings of Fact

The Complaint (for Allegations 2)

26. The transcribed recording alleging "command influence"⁵ follows:

-- And the biggest concern is several instances of what I consider to be undue command influence, although I don't have the specifics, I have been witness to him giving orders to the commanding officer on how he will handle a case. One example is he had a parasailing case for an individual where we briefed the Admiral on it and he got very out of control and he told the Captain exactly what he would do with it. -- We also have another case of hazing and he told the Captain exactly what he will do with it. We have another case in the work center of one specific work center and he told them exactly what he will do with it.

27. Two cases were identified where there was evidence RDML Kraft may have discussed the future disposition of ENTERPRISE discipline cases. The first involved a Sailor who parasailed nude in February, 2011; the second involved several Sailors violating restriction in Bahrain in March, 2011. In connection with the hazing incident referred to in the complaint, there was no evidence that RDML Kraft directed the commanding officer to dispose of the matter in any specific way. For completeness purposes it will be discussed after the first two incidents are addressed.

Testimony concerning parasailing case

28. On 10 February 2011, while on liberty in Marmaris, Turkey, a ENTERPRISE Sailor was filmed parasailing nude. Other ENTERPRISE Sailors were filmed watching and, in some cases, cheering as they rode the commercial craft towing the parasailer. The video was posted on various Internet sites, where it can still be viewed today.

29. Soon after the incident, RDML Kraft met with (b)(6) (b)(7) (c) to discuss the matter. There was general agreement that RDML Kraft was upset over this incident.

⁵ "Command Influence" is defined by UCMJ Article 37 and Rule 104 of the Rules for Courts-Martial and is limited to improperly influencing courts-martial and similar tribunals. A similar standard impacting non-judicial procedure is found in Part V of the Manual for Courts-Martial and will be used as the applicable standard in this case.

30. The ENTERPRISE (b)(6) (b)(7)(c) recalled the meeting as follows:

(b)(6) (b)(7)(c)




31. The ENTERPRISE (b)(6) (b)(7)(c) recalled the meeting as follows:

(b)(6) (b)(7)(c)



⁶ The attorney, in fact, was not at the meeting, but did get involved as described after the fact.

(b)(6) (b)(7)(c)



32. The ENTERPRISE (b)(6) (b)(7)(c) recalled the meeting as follows:

(b)(6) (b)(7)(c)



33. The Strike Group (b)(6) (b)(7)(c) recalled the meeting as follows:

(b)(6) (b)(7)(c)



(b)(6) (b)(7)(c)

34. RDML Kraft recalled the meeting as follows:

I'm aware of the parasailing incident that happened at Sixth Fleet. I did not get out of control and I did not tell the Captain how to handle the case.

Q You did not tell him that the person had to go to Mast?

A I felt like the person should go to Mast, the person that was involved in the incident. That was my feeling that was what I felt, yes. I did not order the Captain to take him to Mast.

I think I have the kind of relationship with (b)(6) (b)(7)(c) where if he disagrees with me he would be happy to tell me that he disagrees. But I personally felt like he should go to Mast, that's true.

Q Do you recall with any precision the words you used with

(b)(6) (b)(7)(c)

A I don't. We did discuss the case because I had some tasking from (b)(6) (b)(7)(c), who is my boss at Sixth Fleet, I had an e-mail. He was pretty clear that he expected it to be handled quickly and then to let him know because he was reporting to (b)(6) (b)(7)(c) at EUCom on the nature of it. It was an international incident and it was quite a lot of high visibility.

35. The ENTERPRISE (b)(6) (b)(7)(c) believes that the (b)(6) (b)(7)(c) spoke with her following the meeting with RDML Kraft. She recalled:

(b)(6) (b)(7)(c)

36. The Strike Group
recalled:

(b)(6) (b)(7)(c)

(b)(6) (b)(7)(c)

(b)(6) (b)(7)(c)

(b)(6) (b)(7)(c)

(b)(6) (b)(7)(c)

(b)(6) (b)(7)(c)

37. (b)(6) (b)(7)(c) was taken to Non-Judicial Punishment on 12 February 2011, and awarded restriction, forfeitures, reduction in grade, and extra duties by (b)(6) (b)(7)(c). Six crewmembers (b)(6) (b)(7)(c) failed to report the misconduct had their cases dismissed by the CO without punishment. One other crewmember was punished at Mast for failure to report the offense, and one was punished for both failure to report and for violating an order by drinking after he had been designated the non-drinking member of the liberty party.

38. In the course of this investigation, RDML Kraft was informed that the participants to the parasailing discussion remembered he communicated a strong desire that the responsible Sailors needed to be held accountable and that it was perceived, by some, that his comments were directing a particular outcome. RDML Kraft offered the following written response:

I am providing this statement in response to an allegation that I violated Manual for Courts-martial, Part V, 1.d(2) by making a statement which was interpreted as directing (b)(6) (b)(7)(c) ENTERPRISE, to punish particular individuals involved in a serious international liberty incident that occurred 10 Feb 2011 in Marmaris, Turkey. The relevant language in para 1.d(2) of Part V of the MCM is: "No superior may direct that a subordinate authority impose nonjudicial punishment in a particular case. . ." I understand the importance of this proscription to the fairness of our military justice system and would never intentionally violate it.

The liberty incident occurred 10 Feb 2011. (b)(6) (b)(7)(c) had consumed alcohol and rented a parasailing boat in Marmaris, Turkey. ENTERPRISE was anchored in the harbor near where the incident occurred. One of the Sailors decided to go parasailing totally naked. While airborne, his genitals were completely exposed. This was filmed by the crew on the boat. He was interviewed after he landed and stated he "hoped the ship had not seen him" as he went through the harbor. The video was posted on the internet and played on the local news. All discussions and articles I saw linked the incident to the ENTERPRISE and were clearly "adverse publicity" for the ENTERPRISE and the U.S. Navy.

On 11 February, ENTERPRISE (b)(6) (b)(7)(c) came to my stateroom for an impromptu meeting to tell me the above event had happened. It was the first I had heard of it. The significant

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adverse publicity included Turkish print media, internet and television. I was surprised by the scope and magnitude of the event - it had truly gone "viral". It took me a few minutes just to understand what had happened. Based on Appendix 10 to Annex E to CNE-C6F OPORD 4000, I determined this type of event was a significant international liberty incident requiring immediate reporting up the operational chain.

As stated in my 18 April submission, my focus during that very brief meeting was on the required operational reports - an OPREP-3 NAVY BLUE and voice report to VADM Harris, the CNE Commander. I do not recall making any statements or discussing NJP or other administrative actions at that meeting. However, according to (b)(6) (b)(7)(c) the others present in the meeting recall me making a statement which they understood as direction to take the Sailors to CO's Mast and further administrative action. I regret that something I said inadvertently left that impression.

Sometime after the 11 February meeting my (b)(6) (b)(7)(c) informed me that they had responded to queries from the (b)(6) (b)(7)(c). I believe. I thought they did the right thing in reinforcing the (b)(6) (b)(7)(c) duty to exercise his personal discretion at that time. At the time, I was unaware of the miscommunication at the original meeting.

I did not intend in this case, or any other, to direct any particular disciplinary action or influence a subordinate (b)(6) (b)(7)(c) discretion in any way. I have every confidence that (b)(6) (b)(7)(c) handled this case like every other he has seen in his two tours as a CVN (b)(6) (b)(7)(c) with careful consideration of the facts and circumstances and judicious use of his personal discretion - and that any actions he took in this case were not influenced by anything I said or inadvertently implied. In the future, I will be even more cautious and endeavor to ensure there are no such miscommunications by me.

Testimony concerning Bahrain liberty case

39. ENTERPRISE started its current deployment on 13 January 2011 for operations in the Navy's FIFTH and SIXTH Fleet areas. Personnel reporting to the ship often staged to Bahrain to wait onward transportation to the ship. On 8 March 2011, six ENTERPRISE Sailors, awaiting onward transportation, went on liberty off the case. At the time there was unrest in the country and public demonstrations challenging the country's government were occurring. The Sailors were seen and photographed at an area where such a demonstration was occurring. They had been previously ordered to stay away from this area. Initial reports indicated that there were pictures of them participating in the demonstration.

40. As a result of these reports RDML Kraft met with (b)(6) (b)(7)(c) do discuss the matter. There was general agreement that RDML Kraft was initially concerned about this incident.

41. The ENTERPRISE (b)(6) (b)(7)(c) recalled the incident and discussions with RDML Kraft as follows:

At I call it the Bahrain Six and people you talk to might call it the same. We had six service members destined for the ship. They flew through Bahrain. They were there transient. While there they ended up going out in town. They ended up getting photographed at a rally and it was extremely embarrassing because they're putting money essentially in the coffers of anti-government protesters and they're wearing cut-off T-shirts as if they were going to a Texas state fair.

At the time it came out it caused displeasure or whatever. The Admiral [RDML Kraft] was irate about it. Admiral (b)(6) (b)(7) and he I'm told were, they talked about it. And so it was embarrassing and I understand that. His comments to me were that, "These guys, they need to get punished for what they did. They should not have been out there. This is embarrassing. Why didn't they know better? We're going to have to fix this." So forth and so on. And all of those criticisms I took and fixed and made our process better. We now have things in place to prevent people not having the knowledge. We implemented some things where they (inaudible) and we put some rigors in place so that people newly reporting have to stay in their hotel rooms.

His reaction at first was what I would consider kind of an overreaction. Not yelling and screaming, not abuse of power, but his first reaction was, "Okay, we're going to make guys muster several times a day in their hotel room." It's as if there was an emotional response and then there was a calming and then there was, I think, probably the right policies made. We now do briefings before they get on the airplane, on arrival at the airport. Daily we do musters to make sure that they're in their hotel room.

So we have measures in place now to prevent ignorant bumbling or whatever and liberty violations. I know it was embarrassing to the Fifth Fleet and to the country of Bahrain, so much so that we got an NCIS document that says the country of Bahrain is asking for their own safety that they not go out in town because rather than get photographed again out in town they'd prefer that they just not have liberty out in town.

(b)(6) (b)(7)(c)

42. The ENTERPRISE (b)(6) (b)(7)(c) recalled the meeting as follows:

Q Were you present during any conversation concerning the disposition of that case?

(b)(6) (b)(7)(c)

He said something to the effect that, "The control of our Sailors," or, "We don't have any control of our Sailors in Bahrain." And I don't recall him ever saying -- there was more than just that, I can't guarantee it. But what I can't tell you is, I honestly don't recall what he said, like, "You're going to take these guys to Mast and then slaughter them," or, you know. I don't recall anything like that.

Well, he did say later on that, (b)(6) (b)(7)(c)

(b)(6) (b)(7)(c)

(b)(6) (b)(7)(c)

Q And you are not aware of the Admiral directing any specific disposition at that Mast?

A I am not aware of anything like that.

Q Are you aware of any hint or desire on the part of the Admiral that there be a certain disposition at that Mast?

(b)(6) (b)(7)(c)

43. The ENTERPRISE (b)(6) (b)(7)(c) recalled the meeting as follows:

Q All right. Have you been present during any other incidents where he was harsh or abusive to whoever he was talking to?

A There was another incident. We had an incident of, we call them the Bahrain Six, of six newly-reporting Sailors to the ship. We went and gave a similar brief to the Admiral, the same three of

(b)(6) (b)(7)(c)

Q Okay. Anything in connection with the Bahrain Six of a similar ilk or was that different?

A Now, that was, "Every one of these guys will go to Mast and be punished."

Q It was or was not? I'm sorry, it was or was not?

A Was.

Q Do you remember what he said?

A "Will go to Mast."

Q Did he say they would be --

A They would be punished. "Every one of these guys will go to Mast and be punished. How did we let this happen?"

Q He said that with the Bahrain Six?

A Yes, sir.

44. The Strike Group (b)(6) (b)(7)(c), recalled the meeting as follows:

I was present at that meeting. As I recall, there was immediate frustration, but as we (the whole group) gained information, including seeing photographs that had been brought to our attention by C5F/PAO, what had been presented dramatically to us from the beach seemed much less so, resulting in only guidance to figure out what the Sailors had really done and why. No direction, certainly that I recall, to take anyone to Mast, or any guidance or implication as to NJP should any of them go to Mast.

45. RDML Kraft recalled the meeting as follows:

Well, we were underway. We just -- we knew that the numbers of transients were building in Bahrain because we were in the Red Sea and we were having trouble getting them out. I believe it was up to 60 or so or maybe more transient personnel there. Before this happened, about a week before, I asked the Captain ... to really take a look at how we're handling and briefing our transient personnel on their behavior there.

And then sure enough just a few days later we got an e-mail ... that six of our Sailors had a picture posted of them on a website called "My Bahrain," and this was at the height of the instability in Bahrain. They were seen at a protest putting money in a bin, which I'm not sure but I was told, it was in Arabic, it has something to do with the Shiite cause there. So it was getting a lot of attention from the Fleet.

I do know that the six Sailors in the picture met with Admiral (b)(6) (b)(7) who is the (b)(6) (b)(7)(c) here at Fifth Fleet, and also our (b)(6) (b)(7)(c) who was in at the time, (b)(6) (b)(7)(c) and those -- (b)(6) (b)(7)(c) told me that the Sailors admitted what they did was wrong and they knew that it was wrong. They came to ENTERPRISE the next day. Admiral (b)(6) was not overly upset. He sent me an e-mail saying, hey, I'm not looking for any specific punishment for these guys. And I don't -- I do not know what happened to any of them. I have not been involved in it. The only thing I asked the CO is if they were going to be put on liberty risk and he said yes, and that was it.

46. Neither the Strike Group nor Ship's (b)(6) (b)(7)(c) were aware of any issues concerning RDML Kraft's discussion with the ship's leadership about the liberty incident.

The hazing case

47. At the time this investigation was commenced, there was open investigation into alleged sexual misconduct in the Air Operations Division on board ENTERPRISE. The un-contradicted testimony indicates that RDML Kraft had been dissatisfied with ENTERPRISE investigation into the matter. The (b)(6) (b)(7) related he basically had an unpleasant meeting with RDML Kraft concerning the investigation where the Admiral, on (b)(6) (b)(7)(c) decided to take over the investigation at the Group level. (b)(6) (b)(7)(c) were ever directed to take specific disciplinary action against the subjects of the investigation. The Group investigation has since been completed and the CSG-12 turned the report over to the ENTERPRISE Command Judge Advocate for the ship's review and action as deemed appropriate. No written or oral direction was given to ENTERPRISE personnel on CSG-12's expectations on the disposition.

Applicable Standards

48. Manual for Courts-Martial, Part V, paragraph 1d(2):

Commander's discretion. A commander who is considering a case for disposition under Article 15 will exercise personal discretion in evaluating each case, both as to whether nonjudicial punishment is appropriate, and, if so, as to the nature and amount of punishment appropriate. No superior may direct that a subordinate authority impose nonjudicial punishment in a particular case, issue regulations, orders, or "guides" which suggest to subordinate authorities that certain categories of minor offenses be disposed of by nonjudicial punishment instead of by court-martial or administrative corrective measures, or that predetermined kinds or amounts of punishments be imposed for certain classifications of offenses that the subordinate considers appropriate for disposition by nonjudicial punishment.

Analysis

The parasailing case

49. The (b)(6) (b)(7) remembers RDML Kraft saying words to the effect: "Those guys, you know, they're never going to go on liberty again. They need to go to Mast and be held accountable." He (b)(6) (b)(7)(c)

50. The (b)(6) (b)(7) remembers RDML Kraft saying words to the effect: "This guy is going to Mast and then (b)(6) (b)(7)(c) send him home." He testified that this meant to him that the accused was to be kicked out of the Navy.

51. The ENTERPRISE (b)(6) (b)(7)(c) recalled that RDML Kraft wanted the perpetrator to be placed on liberty-risk for the rest of the deployment. Clearly this and the Admiral's irritation at the incident stuck in his mind. When asked if RDML Kraft said anything about administering Mast to Sailors who had been involved he stated:

I mean, honestly I can't recall exactly with the parasailing case. Maybe words to the effect: "I want every one of these guys to go to Captain's Mast and they will be on Charlie for the remainder of the cruise."

Given his qualification to his memory of what RDML Kraft said regarding Mast, his recollection cannot be relied on as it relates to the Mast statement.

52. The Strike Group (b)(6) (b)(7)(c) remembers RDML Kraft using "some language [to the effect] these guys need to go to Mast." He also testified:

He provided what some might call influence to the CO initially in my opinion, that there were certain expectations he had of the process. And later before the CO had gotten to that process, before he had gotten that far down the line he made it clear to the CO, no, no, no, this is your business.

53. RDML Kraft does not remember exactly what was said during this meeting. He recalls that he thought the responsible Sailors should go to Mast, but he stated he did not order the CO to take anyone to Mast. RDML Kraft indicated his "boss" at Sixth Fleet had shown an interest in handling the matter expeditiously, but had expressed no expectation about forum or accountability action to be taken.

54. Having a U.S. Navy petty officer parasail naked while on liberty in a Muslim country is not a trivial incident. To have it filmed and posted on the Internet with the petty officer's U.S. Navy shipmates laughing and cheering him on, is further aggravation. Arguably, to the extent that RDML Kraft mentioned Mast as an appropriate forum to get to the bottom of this, he was demonstrating some restraint, in that court-martial would not have been an unreasonable outcome for the petty officer. That said, if a Commander tells a subordinate CO to Mast and punish a member for some suspected offense, the Commander violates the prohibition in MCM Part V, 1d(2). There is agreement from all the individuals present at the relevant

meeting that RDML Kraft was upset that the incident occurred and believed action had to be taken. There is also agreement among several of the participants that RDML Kraft's statement prompted the Command and Staff Judge Advocates to be brought into the matter after it occurred. While the (b)(6) (b)(7) did not believe RDML Kraft was directing a particular disposition or attempting to limit (b)(6) (b)(7)(c) discretion, the preponderance of the evidence indicates RDML Kraft was upset by the incident and stated words to the effect that the Sailors involved needed to be taken to Mast and kicked out of the Navy. RDML Kraft's statement was sufficiently directive to violate the MCM restriction against interfering in a Commander's discretion. The violation is considered to have occurred when he made the statement even though he corrected any misunderstanding his statement may have engendered well before any decision was made by the CO concerning discipline.

The liberty incident case

55. With the exception of the (b)(6) (b)(7)(c) none of the witnesses remember RDML Kraft inappropriately directing the CO to discipline the Sailor involved in the liberty incident in any specific manner. We consider the testimony from the Admiral, (b)(6) (b)(7)(c) as more credible than the (b)(6) (b)(7)(c) memory of events in this case and conclude that RDML Kraft did not direct any specific discipline action against the Sailors involved. Interestingly, the (b)(6) (b)(7)(c) had a recollection more favorable to the Admiral of the parasailing discussion, and it may be that he confused the two discussions in his testimony.

The hazing case

56. There is no evidence that RDML Kraft directed subordinates to take specific disciplinary action in this case. There is no prohibition from him having his staff take over the investigation from the ship. There is no prohibition in having the resultant investigation report returned to the ship for appropriate disposition.

Conclusion

57. The allegation is substantiated relating to the parasailing statement.

Allegation 3: That RDML Kraft suppressed or improperly delayed timely reports of sexual assault in violation of SECNAVINST 1752.1B (Sexual Assault Victim Intervention (SAVI) Program).

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Findings of Fact

The Complaint (for Allegations 3)

Carrier Strike Group Twelve is intentionally covering up and hiding sexual assault/SAVI cases. This has been done on both the LEYTE GULF and ENTERPRISE. They are sending [sic] [assume he meant "not sending"] SITREPS in a timely fashion and have instituted a judicial review of all initial reports of sexual assault prior to allowing or sending out any sexual assault SITREPS. ENTERPRISE has buried several sexual assault cases and treated them as hazing to include an incident of "sack tapping." They have questioned the judgment of the SAVI program coordinator to the point of ordering the SAVI to report to the Strike Group Judge Advocate General Officer the information to discuss the information that was brought up by the victim in a judicial review before sending SITREPS. The SAVI POC left the meeting after feeling that the meeting was compromising the SAVI program, however the Commanding Officer of ENTERPRISE later ordered the SAVI to meet with the JAG Officer in the XO's Stateroom.

58. Although this complaint did not specifically identify RDML Kraft, we examined his involvement in setting overall policy in reporting and investigating sexual assault complaints.

59. (b)(6) (b)(7)(c) USN, was the ENTERPRISE (b)(6) (b)(7)(c) and the (b)(6) (b)(7)(c) referred to in the complaint. The position is now called the (b)(6) (b)(7)(c) (b)(6) (b)(7)(c)

knows who RDML Kraft is, but has not had any professional or personal conversations with him. When ask what knowledge she had of RDML Kraft impeding the SAPR reporting requirements she identified a 19 March 2011 message from RDML Kraft that added a requirement that the "initial [SAPR] report of sexual assault contain the information concerning the Judge Advocate consulted." The message went on to state: "Ensure the consulted Judge Advocate reviews the sexual assault message report before it is released unless timeliness requirements preclude." The basic Department of the Navy guidance on sexual assault reporting requires Judge Advocate involvement. RDML Kraft's policy as expressed in this message required that involvement at the start of the process unless "timeliness requirements precluded." (b)(6) (b)(7)(c) had no knowledge of any sinister motives on the part of RDML Kraft in imposing this added requirement, but in practice the process caused problems in promptly reporting sexual assault cases.

60. RDML Kraft testified that his 19 March 2011 message emphasized the importance of submitting sexual assault reports within the strict time requirements of imposed by higher

authority. In connection with the delayed report in the OC Division case, FDML Kraft testified:

The only one I know about is the one I mentioned in the OC Division, when the two females came forward and said they had been sexually assaulted. ENTERPRISE continued with an investigation. I believe it was for about a week. And they should have -- they should have immediately started the notification process. They continued with the investigation I think to determine if it was a sexual assault or not. But that was really not part of the checks and balances of the program. You report it and then you investigate it to determine the validity.

61. In connection with the "sack tapping" mentioned in the complaint, he indicated he relied on his staff judge advocate to work with ENTERPRISE to ensure it was handled properly. He understood it was determined to be a hazing incident and not a sexual assault. He noted that the requirements to report hazing to higher authority are similar to those required for sexual assault, so there was no motive to call it hazing just to avoid reporting it. He indicated he did not suggest or otherwise encourage that the case be considered hazing instead of sexual assault.

62. RDML Kraft testified that he has received no informal guidance or pressure to delay reports or minimize the number of reports. He has never been criticized about any of the incidents his subordinates have reported up the chain-of-command. It is important to him that all incidents are properly categorized and reported within the time requirements imposed by higher authority, as his message reflects.

63. The (b)(6) (b)(7) (c) of ENTERPRISE testified that it has "been a journey of discovery" in getting investigating and reporting sexual assault cases right. He does not attribute any short-comings in that regard to any policies or pressures from RDML Kraft. In fact he received a (b)(6) (b)(7)(c) from RDML Kraft on 10 March 2011 because of the "unsatisfactory sexual assault reporting" in connection with OC Division incident:

So the Admira (b)(6) (b)(7)(c)
(b)(6) (b)(7)(c)

(b)(6) (b)(7)(c) So from that point on I've been very clear. I've been trying to toe the line, you know, like as pristine as I can possibly be.

64. The Group (b)(6) (b)(7)(c) testified that she discussed the "sack tapping" allegation with the MIDLANT and Second Fleet JAGs and there was agreement that it could be treated as hazing and reported as such.

65. In connection with one of the sexual assault incidents identified by (b)(6) (b)(7)(c) testified that the information she received did not evidence sexual assault. She attempted to discuss the facts with (b)(6) (b)(7)(c) but (b)(6) (b)(7)(c) refused to talk to her because she felt she didn't have to:

The investigating officer very clearly asked her, "Did he ever actually touch anything? Did he touch your breast? Did he touch your inner thigh, genitals, anything?" And she said, "No, he was just batting at my T-shirt and I batted his hand away and I slapped him and he left." So based on that information a SITREP did not go out but the investigating officer had encouraged the female if she wanted to talk to the SAPR that she was available for her to get any further counseling that she might need. The investigating officer felt like there might be more to the story.

So when the (b)(6) (b)(7)(c) for the ship that they forwarded up two more SITREPs, one of which was sent out based on the additional information concerning a different service member. And then this particular case, there was no information in the actual write-up for the SITREP in the comments section as to what had occurred, and so I asked to speak to the (b)(6) (b)(7)(c) just to find out what did the victim actually say had occurred other than what she had told the investigating officer.

The (b)(6) (b)(7)(c) didn't want to speak to me so it took a little while for the (b)(6) (b)(7)(c) to convince the (b)(6) (b)(7)(c) that she needed to talk to me so that we could clear up what were the actual events that had happened. And then the actual SITREP went out after the (b)(6) (b)(7)(c) and I finally had that discussion.

I don't know. She kept saying that she shouldn't have to talk to (b)(6) (b)(7)(c) and I explained to her. I said, "Look, under the sexual assault response program we all work together as far as (b)(6) (b)(7)(c), (b)(6) (b)(7)(c). We're all trying to work towards the same thing." And (b)(6) (b)(7)(c) said, "If there's some reason that you think you shouldn't have to tell me the details of your conversation so that we can put it in the SITREP then please point me to what you're looking at." I said, "But I've read all the instructions. It's an unrestricted report so I don't understand why you're not willing to explain to me what she said as far as the actual events so that I can make sure that we correctly report it."

This delayed the reporting in that case but that was not at the direction of RDML Kraft.

66. The ENTERPRISE (b)(6) (b)(7)(c) testimony that differences of opinions between the (b)(6) (b)(7)(c) and the lawyers contributed to misunderstandings and delays rather than improper influence from RDML Kraft:

The current (b)(6) (b)(7)(c) made it very, you know, made us aware that she didn't agree with the staff group (b)(6) (b)(7)(c) having a chop on the SITREP that she was sending out. I attempted to have a meeting with (b)(6) (b)(7)(c) and with (b)(6) (b)(7)(c) just to discuss the facts of a separate case because the information that was passed to me from the (b)(6) (b)(7)(c) -- she's the ship's (b)(6) (b)(7)(c) -- from (b)(6) (b)(7)(c) to the (b)(6) (b)(7)(c)

about this other unrelated case didn't sound like it met the threshold of a sexual assault or an indecent assault, whichever term you want to throw out there.

So we attempted to have a meeting with her and talk to her about what the facts were and what had been relayed to her and she got very upset and stormed out of the meeting. She's made it really clear that she disagrees with anyone questioning anything that she puts in a SITREP. So this woman is, I think that the strike group was genuinely trying to help the process although they did put oversight on the process. In no way, shape or form do I think from my perspective as a (b)(6) that anybody is trying to keep anything under the rug because everybody is very aware that careers hang in the balance when you fail to report things.

So I can't -- what we were doing as (b)(6) (b)(7) was talking to a (b)(6) and asking her some facts that would support elements of a one-point charge. What the (b)(6) did when she talked to a member was say, "Did he do something that made you feel uncomfortable?" and the member potentially said, "Yes." So I think that is, you know there was a breakdown in communications that could have left that impression but it certainly is not anybody's intent not to report something.

The hazing specifically, the sack tapping, (b)(6) (b)(7)(c) and I had lengthy conversations with the beach, the (b)(6) (b)(7)(c) to understand did they want that reported as sexual assault versus hazing. And the consensus was that it wasn't sexual assault, that we properly classified it as hazing. There was no intent to gratify lust or desire. You're getting hit in the genitals because it causes pain and surprise and it's a juvenile prank. You're not, the genitals aren't being touched because they're a sexual organ. So that was the three, at least three (b)(6) (b)(7)(c) consensus on how to report that. We still reported it. We certainly weren't trying to cover up any sexual assaults on the ship.

67. The (b)(6) (b)(7)(c) also confirmed his impression that there was no thought at the Group level to delay or avoid reporting sexual assault cases:

Q But was there ever a tone of let's not air out our dirty laundry until we absolutely have to or it was let's make sure these go out the way they are supposed to go out?
A No, in fact [RDML Kraft] was quite the opposite. In fact he's very quick to emphasize the need to get the word out and he will pick up the phone and personally call his commanders and let them know that. Because he is sensitive, he is sensitive to word getting out and not having been reported at the command level and then staffs are working with things and commanders hear things via the back door.

68. Additional issues concerning the Sexual Assault Prevention and Response program on ENTERPRISE, not involving RDML Kraft, under still under review by other Navy organizations.

Applicable Standards

69. OPNAVINST 1752.1B of 29 Dec 06, Sexual Assault Victim Intervention (SAVI) Program, paragraph 8.d:

d. Data Collection and Reporting. Commanders and COs will ensure:

(1) All unrestricted reports of alleged sexual assault ... will be reported Submit reports via the OPREP-3 NAVY BLUE or (PREP-3 NAVY UNIT SITREP,

Analysis

70. In connection with the "sack tapping" incident, there is no evidence that RDML Kraft was involved or influenced the decision to treat and report the incident as hazing and not sexual assault. The matter was carefully considered by several lawyers who also discussed the issue with other lawyers knowledgeable of the law in this area. The reporting requirement for hazing ensures that the incident is reported to higher authority and is not any more or less stigmatizing than being reported as a sexual assault. Even in retrospect there is no reason to consider that this report should have been reported as sexual assault vice hazing.

71. In connection with the delay in reporting brought about involvement of a legal review of the report, it is noteworthy that RDML Kraft emphasized the importance of timely reporting to his subordinates and even (b)(6) (b)(7)(c) ENTERPRISE when the ship failed to make a timely report. His message guidance implies a lawyer should review the initial report before it went out but made it clear this review was only expected if it could be accomplished and still meet the reporting deadline. The actual reporting delays identified in our inquiry were the problems at ENTERPRISE's level or because of the apparent unwillingness of the (b)(6) (b)(7)(c) to work with the Group (b)(6) (b)(7)(c). There is no evidence that these delays were caused or encouraged by RDML Kraft.

Conclusion

72. The allegation is not substantiated.